



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1995

Ms. Christine T. Rodriguez
Staff Attorney
Legal Services, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-1124

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26735.

The Texas Department of Insurance (the "department") has received a request for a certain sexual harassment investigation report, including the original complaint filed, a listing of all people interviewed, copies of all interviews and statements, and a copy of the final report. You advise us that the department has made some of the requested information available to the requestor. You have submitted the remaining information to us for review, however, and claim that section 552.101 of the Government Code excepts it from required public disclosure.

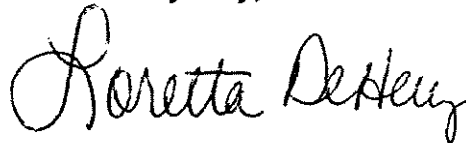
Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the information submitted to us for review is protected by the doctrine of common-law privacy as applied in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files in *Ellen* contained individual witness and victim statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Id.* at 523, 525. The court held that the nature of the information, *i.e.*, names of witnesses and detailed

affidavits regarding allegations of sexual harassment, was exactly the kind specifically excluded from disclosure under the privacy exception as described in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *Id.* at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* We think the holding in *Ellen* is controlling on the documents at issue in this case.

We have examined the records that you seek to withhold under section 552.101. Included among them are a summary of sexual harassment allegations, complaints, witness statements, questionnaires, investigation notes, electronic mail messages, and various interagency memoranda relating to the sexual harassment investigation. We conclude that the department must withhold the complaint and witness statements in their entirety under section 552.101 of the Government Code in accordance with the court's holding in *Ellen*. However, the department must release the remaining information as indicated. We have marked the type of information that identifies or tends to identify the complainants and witnesses in those records that must be released to the requestor.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

¹You also claim that the information submitted to us for review is protected under section 552.101 of the Government Code in conjunction with the informer's privilege. The content of an informer's statement is protected only to the extent that it would reveal the informer's identity. See Open Records Decision Nos. 549 (1990) at 5, 515 (1988). As we protect the identities of the complainant and witnesses under the court's holding in *Ellen*, we need not consider whether such information is protected by the informer's privilege.

LRD/GCK/rho

Enclosures: Marked documents

Ref.: ID# 26735

cc: Mr. Ed Attra
Information Specialist
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(w/o enclosures)